

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Robert Wolff, Appeals Officer
AP:FW:DAL:RPW
(Appeals Office, Internal Revenue Service)

from: Stephanie Bland
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Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

subject: Taxability of Diesel Fuel used in Diesel Particulate Filters

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Company =

ISSUE

Whether diesel fuel used in the diesel particulate filters (DPFs) installed on Company's vehicles is used as a fuel in a diesel-powered highway vehicle for purposes of § 6427(l) of the Internal Revenue Code (Code).

CONCLUSION

The diesel fuel used in the DPFs installed on Company's vehicles is not used as a fuel in a diesel-powered highway vehicle for purposes of § 6427(l) of the Code.

FACTS

Company is a for-hire truckload carrier with a tractor fleet used predominantly in interstate transportation. Company's tractors are registered, or are required to be registered, for highway use under state law.

In 2007, the Environmental Protection Agency (EPA) implemented new vehicle emission standards for diesel powered vehicles, mandating, among other things, the adoption of specific procedures for "exhaust regeneration". In keeping with these standards, new tractors purchased from original equipment manufacturers (OEMs), post implementation date, are equipped with a device known as a DPF. A DPF is an after treatment system for exhaust generated by the propulsion motor of the tractor, and is functionally unnecessary for the operation of the tractor. There are a variety of DPF technologies on the market. The DPFs installed on Company's tractors use the process described below.

LAW AND ANALYSIS

Section 4081(a) imposes a tax on certain removals, entries, and sales of taxable fuel, including diesel fuel.

Section 4041(a)(1)(A) imposes a tax on any liquid other than gasoline sold for use or used as a fuel in a diesel-powered highway vehicle or a diesel-powered train. An

exception to the tax imposed by § 4041(a)(1) exists for any liquid taxed under § 4081 (other than at the Leaking Underground Storage Tank trust fund rate) that is not credited or refunded.

Section 6427(l)(1) generally provides that if any diesel fuel on which tax has been imposed by §§ 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under §§ 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under § 6427(l)(4)(C)(i).

Section 6427(l)(2) defines “nontaxable use” as any use which is exempt from the tax imposed by § 4041(a)(1) other than by reason of a prior imposition of tax.

Section 48.6427-8(b)(1) of the Manufacturers and Retailers Excise Tax Regulations provides that a credit or payment is available if diesel fuel is, among other things, used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle.

In this case, the DPFs are functionally unnecessary for the operation of the tractors and do not enhance the performance of the propulsion motor, for example, by increasing horsepower, torque, hauling capacity, or fuel economy. But for the adoption by the EPA of the environmental standards discussed above, OEMs would not manufacture tractors - and owners of older vehicles would not retrofit their vehicles - with this device. The sole function of these DPFs is to produce cleaner emissions.

Further, the fuel used in these DPFs is drawn from the fuel supply tank and sent to the fuel module, where it is sent to the DPF unit via a separate injector and fuel line. The fuel used in these DPFs never enters the combustion chamber of the propulsion engine.

For these reasons, we conclude that the diesel fuel used in Company's DPFs is used other than as fuel in the propulsion engine of a diesel-powered highway vehicle. Accordingly, the diesel fuel used in Company's DPFs is not used as a fuel in a diesel-powered highway vehicle. Therefore, the use of diesel fuel in Company's DPFs is a nontaxable use of such fuel within the meaning of § 6427(l).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call Mike Beker at (202) 622-3130 if you have any further questions.